

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KENNETH PUND, <i>et al.</i> ,)	
)	CASE NO. 1:16cv1076
Plaintiffs,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
CITY OF BEDFORD, <i>et al.</i> ,)	
)	
Defendants.)	<u>ORDER</u> [Resolving ECF No. 10]

Pending before the Court is the Parties' May 12, 2016 Joint Motion requesting that the Court issue an order (1) preliminarily enjoining the City of Bedford's Point of Sale Inspection Requirements; and (2) consolidating Plaintiffs' request for preliminary relief with the trial on the merits as to declaratory and injunctive relief only, and set a briefing schedule accordingly. [ECF No. 10](#). For good cause shown, the motion is granted.

Scope of Preliminary Injunction

The scope of the requested and granted injunctive relief shall be consistent with the Fifth and Sixth Prayers for Relief enumerated in Plaintiffs' May 4, 2016 Verified Complaint, which, in sequence, request as follows:

Enjoin Defendants from directly enforcing the warrantless Point of Sale search

Enjoin Defendants from indirectly enforcing the warrantless Point of Sale search requirement by criminally prosecuting Plaintiffs, stripping them of the right to occupy or rent their property, or otherwise

[ECF No. 1 at PageID #: 18–19](#). Accordingly, the City of Bedford Point of Sale Inspections and

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mandatory inspection fees are enjoined, and this injunction shall remain in effect until further Order of the Court.

Plaintiffs and Defendants jointly posit, and the Court agrees, that, by operation of City of Bedford (“City”) municipal ordinances, the term “Point of Sale Inspections” excludes the following:

(1) City inspections conducted after the City has obtained the knowing and voluntary consent of the owner and/or occupant of the residence subject to inspection.

Such consent shall be deemed “knowing and voluntary” so long as owners and occupants are apprised that (a) the Point of Sale Inspection Requirements have been enjoined by the Court; (b) the Inspection Requirements are entirely voluntary; (c) no adverse action shall be taken against those who decline an inspection, and this shall be the case even if the Court later decides the ultimate issues in the City’s favor and lifts the injunction.

(2) City inspections conducted in response to genuine emergency. “Emergency” shall not be construed to embrace routine inspections such as those previously conducted simply because a residence is for sale.

(3) City inspections conducted with a warrant. The City shall not seek or obtain a warrant solely on the basis that an owner or occupant has failed to provide consent to a Point of Sale Inspection, or otherwise without probable cause.

(4) Observations of code violations within plain view of City officials. Further, this Order does not enjoin any activity conducted pursuant to a Point of Sale Inspection that has already occurred prior to date of this Order.

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In conclusion, all City of Bedford Point of Sale Inspections are hereby temporarily enjoined. The City is further temporarily enjoined from imposing its Point of Sale Inspection Fee on any homeowner or occupant, unless that homeowner or occupant provides knowing and voluntary consent to an inspection in conjunction with the sale of his or her property. The City is temporarily enjoined from proactively contacting any homeowner to schedule a Point of Sale Inspection. Should any homeowner contact the City, the City is ordered to communicate the substance of the Court's Preliminary Injunction to that homeowner. In all other scenarios, the City remains free to solicit consent to conduct an inspection in conjunction with the sale of a home.

Consolidation of Briefing Schedule

Plaintiffs and Defendants jointly move to consolidate Plaintiffs' request for injunctive relief with the trial on the merits, as to Plaintiffs claims for permanent declaratory and injunctive relief. [Federal Rule of Civil Procedure 65\(a\)\(2\)](#) states, in pertinent part, that "[b]efore or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing." "The manifest purpose and proper application of the rule is to conserve the time and resources of the court and of litigants where, in an action whose only ultimate objective is a permanent injunction, the same evidence will be applicable in both the preliminary and merit stages of the cause." [Hershhorn v. Viereck, 500 N.E.2d 379, 381 \(Ohio Ct. App. 1985\)](#) (citing McCormac, Ohio Civil Rules Practice (1970) 350, Section 14.10). "The rule is not intended to permit a trial court to advance, consolidate, and try claims and issues that differ from those which are unique to the application for a preliminary injunction." [Id.](#) This

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overriding purpose is perfectly consistent with the parties' request here. The primary and initial issue presented by this case is whether, on its face, the City's Point of Sale Inspection Requirements survive Fourth, Fifth, and Fourteenth Amendment scrutiny. The issue is purely a matter of law.

Consequently, it is ordered that the First, Second, Fifth and Sixth Prayers for Relief enumerated in Plaintiffs' May 4, 2016 Verified Complaint shall be heard on the merits forthwith. Accordingly, it is ordered that Plaintiffs' Motion for Preliminary Injunction ([ECF No. 4](#)) shall be converted to and treated as a Motion for Permanent Injunction. Defendants shall file any memorandum responding to the arguments and evidence presented in the foregoing Motion no later than June 30, 2016. Plaintiffs shall file any reply memorandum and further evidence no later than July 29, 2016. Plaintiffs' claims for declaratory and injunctive relief shall be deemed fully submitted to the Court upon the filing of their reply memorandum. The Court will determine at that time whether a hearing to entertain arguments and question counsel will be necessary or helpful. Recognizing the dispositive nature of the parties' forthcoming briefings and the complex nature of the case, the Court enlarges the page limitations for each forthcoming memorandum to thirty (30) pages.

Finally, the Court bifurcates and holds in abeyance all issues not specified above, including but not limited to those related to individual liability, restitution, nominal damages, and attorneys fees.

The Court orders each of the foregoing in reliance upon the parties' affirmation that there are at this time no genuine disputes as to any of the material facts pled in Plaintiffs' May 4, 2016

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Verified Complaint.

The hearing scheduled for May 13, 2016 at 9:30 a.m. in Courtroom No. 351 before Judge Benita Y. Pearson is hereby cancelled.

IT IS SO ORDERED.

May 12, 2016
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge